

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198019

DATE: August 7, 1981

MATTER OF: Computer Engineering Associates, Inc.

DIGEST:

1. Backdating of notice of rejection of offer is procedural irregularity which does not affect validity of contract award.
2. Where contracting agency determined that small business protester's proposal demonstrated lack of understanding of complexity of contract, that was not responsibility determination and did not require referral to SBA.
3. Only remedy available for bidder or offeror whose bid or proposal has not been fairly and honestly considered for award is recovery of bid/proposal preparation costs.
4. Where rejection of offer was not arbitrary, capricious or motivated by bad faith, protest and claim for proposal preparation costs are denied.

Computer Engineering Associates, Inc. (CEA), protests the rejection of its low fixed-price proposal for keypunch services under request for proposals (RFP) No. N00123-80-R-0199 issued by the Naval Regional Contracting Office (NRCO), Long Beach, California.

The Department of the Navy (Navy) has proposed that the protest be dismissed as moot because the option under the contract awarded under the RFP was not exercised and the procurement subsequently was advertised allegedly in return for CEA's agreement to withdraw the protest under the RFP. CEA was awarded the advertised contract. CEA denies that it agreed to withdraw the protest.

[Protest of Bid Rejection]

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According to the information furnished to support the protest and claim for proposal preparation costs, the Navy Regional Data Automation Center (NRDAC), the facility which evaluated the proposals for NRCO, found initially that the CEA proposal showed that CEA had a very good understanding of the problem and method of approach, very good management and staffing and satisfactory experience. However, after this initial evaluation, NRDAC apparently evaluated the proposals again. Upon reevaluation, NRDAC decided that CEA had an inadequate understanding of the complexity of the contract, since NRDAC believed CEA's estimate of performing the work at a rate of 11,000 keystrokes per hour was unrealistic. Further, NRDAC had second thoughts about CEA's experience in that the prior punchcard jobs referenced in the CEA proposal did not involve the variety of processing that would be required at NRDAC.

CEA was provided an opportunity to support its estimated keystroke rate. CEA responded that an average rate of 12,000 to 13,000 strokes per hour could be realized based on its experience, but that it took a conservative approach to the effort involved and employed a keystroke rate of about 10,000 per hour.

NRDAC reported to the contracting officer that the industry standard for the difficulty of the work involved is approximately 8,000 keystrokes per hour. This was based upon the fact that the incumbent contractor, with its employee incentives for increased performance, averaged 8,000 keystrokes per hour and that Coleman College requires its graduates to have a keystroke average of 8,000 to 10,000 per hour. The contracting officer concluded that the CEA proposal was unacceptable because CEA failed to demonstrate an adequate understanding of the requirements of the contract.

By letter dated February 29, 1980, CEA was informed by the contracting officer that its proposal was rejected as technically unacceptable because the number of hours proposed in its staffing structure was insufficient and no rationale was provided which reasonably explained how CEA could provide the

services with the staffing proposed. Award was made to International Technical Services.

The CEA protest, with which the SBA representative joins, is that Coleman College does not establish industry standards; that with more than 50 percent of the worktime being devoted to training new personnel during its first week of performance on the subsequently awarded advertised contract, it achieved a rate of 7,250 keystrokes per hour, which projects to more than 10,540 keystrokes per hour on a regular basis; that whether CEA could perform successfully the required work at the price offered was a responsibility issue for the SBA, not the contracting officer, to decide; and that the contracting officer's February 29 letter advising CEA that its proposal was unacceptable was typed in mid-March and backdated. In the circumstances, CEA believes it should be awarded proposal preparation costs and that the contract subsequently awarded to it under the advertised solicitation should be extended 1 year to compensate for the work lost when its proposal under the RFP was improperly rejected.

As regards the backdating of the February 29 letter, we have held that notification deficiencies of this type are regarded as procedural irregularities which do not affect the validity of a contract award. LaBarge, Incorporated, B-190051, January 5, 1978, 78-1 CPD 7.

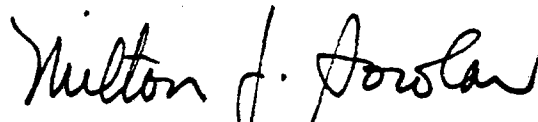
Further, we have recognized that some matters which traditionally bear on responsibility may be considered as part of the technical evaluation when negotiation procedures are used and need not be referred to SBA for an SBA responsibility determination. Utah Geophysical Inc., supra. Here, it appears that all the contracting officer did was determine that the CEA proposal was unacceptable because it demonstrated a lack of understanding of the complexity of the contract involved. This was not a responsibility determination and did not require a referral to SBA.

Moreover, we do not believe that CEA's current contract should be extended for 1 year or that it should be awarded proposal preparation costs. The

only remedy available to a bidder or offeror whose bid or proposal has not been fairly and honestly considered for award is the recovery of bid/proposal preparation costs. B-177207, July 9, 1973; B-177489, December 14, 1972. We have held that bid/proposal preparation costs will be allowed where the Government acted arbitrarily or capriciously with respect to a claimant's bid or proposal or where the rejection of the claimant's bid or proposal was motivated by bad faith. Harco Inc.--Claim for Legal Fees and Bid Preparation Costs, B-189045, January 26, 1979, 79-1 CPD 55; Base Information Systems, Inc., B-186932, October 25, 1978, 78-2 CPD 299; Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344.

While CEA disputes that the Coleman College keystrokes-per-hour requirement should be used as a standard for judging what could be accomplished under the contract, the fact remains that at the preproposal conference attending parties were informed of the keystroke-per-hour rate which the agency felt they could expect to achieve on the resulting contract, that prior contract experience supported that rate and that two of the three offerors submitting proposals based their proposals on similar rates. Thus, the contracting officer had a reasonable basis to conclude at the time of rejection of the CEA proposal that the CEA rate was wrong and that the CEA proposal did not reflect an understanding of the work that would be required under the contract. In that regard, we have held that a contracting agency may properly utilize its own reasonable estimates of man-hours needed to perform work to measure an offeror's understanding of the requirements. Sogitec, Incorporated, B-196158, January 24, 1980, 80-1 CPD 70. "The fact that a fixed-price contract is involved does not negate the propriety of the agency's actions -- the agency's concern was not with what the awardee would be legally bound to do under a fixed-price contract, but with the offerors understanding of what would be required." Sogitec, Incorporated, supra. An agency need not consider an offeror's low price when it submits an unacceptable technical proposal. Space Age Surveyors, B-199634, November 12, 1980, 80-2 CPD 355. Consequently, we do not believe that the agency was acting in an arbitrary or capricious manner or that the agency in rejecting the CEA proposal was motivated by bad faith.

Accordingly, the protest and the claim for proposal preparation costs are denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States